Cases referred to :—

(1) *Rowe v. Young,* 2 Brod. & B. 234.

(2) *Crouch v. Pastolfe,* S. T. Raym. 418.

(3) *Haldane v. Johnson* 8 Ex. 689.

APPEAL FROM DISTRICT JUDGE.

Lim Cheng Ean for the Appellant.

S. M. Sharma for the Respondent.

Evans, J. : — In this case the appellant is the tenant of premises known as 297, Kota Road, Taiping, and was sued before the District Judge for an order of ejectment with an allegation, made for the purpose of taking the case outside the Rent and Charged Land (Restriction) Enactment, that the rent was in arrears for more than 14 days. The defendant denied that rent was lawfully in arrears, alleging that no demand had been made at the premises leased, and that he was unaware of the plaintiff's address. The plaintiff had recently purchased the premises and had, since then, been anxious to obtain possession. Allegations of fraud or sharp practice are made on both sides.

Before me, the counsel for the appellant relied mainly upon an argument that the rent was not lawfully due and unpaid. He also relied upon a tender of the rent due after the receipt of the notice to quit. I do not think it is necessary to go into that point.

The learned District Judge, having found that the rent was due in advance, went on: "The Defendant has tried to show that the actual delay in paying his June rent was due to the Plaintiff, since, he (Defendant) was unable to send the rent by post for want of an address. I find no substance in Defendant's contention as the following facts show. He received Ex. P. 1 (a request to give up possession dated the 19th May before any rent was in arrears) on the 21st May. At the top there appears the name and address of Plaintiff's solicitor". It is clear, therefore, that the learned District Judge decided the case on the assumption that it was the duty of the tenant to seek out his landlord and to tender her the rent, although it had admittedly been the practice of the landlord to collect rent through her brother-in-law. It is true that the general rule is that the debtor must seek out his creditor but this does not apply in the case of rent which is due on the land demised and is very commonly collected on the spot. In the words of Mr. Justice Bayley in *Rowe v. Young*[1]:

"Rent is reserved in some case generally, and then the proper place for the payment, the place appointed by law, is the land out of which it issues. In some cases it is expressly made payable at some other place: and yet, in either (?) case, is there a precedent, either in debt on the reddendum, or in covenant, of an averment, that the Plaintiff was at the time and place to demand it. The declaration, in such cases, is always general, that on such a day so much of the said rent became due and in arrear, and that Defendant, although often requested, had not paid ..... Now, what can be the principle of all these cases? What but this, that the money to be paid is a debt from the Defendant; that it is due generally and universally; that it will continue due, though there be a neglect on the part of the creditor to attend at the time and place to receive; that it is a matter of defence on the part of the Defendant to shew that he was in attendance to pay, but that the Plaintiff was not in readiness to receive; and that defence will generally speaking, be in bar of damages only, not in bar of the debt, and must be accompanied with a bringing of the debt into court". In *Crouch v. Pastolfe*[2] which was a claim in debt for rent, a plea of being in attendance and ready to pay was held good although there was no actual tender of the rent.

In England there is generally a covenant, or an implied covenant, to pay, and where action is brought upon the covenant, the position is as the learned District Judge assumed. [See *Haldane v. Johnson*[3]].

In this case, there is no question of any covenant to pay. The defendant was apparently living on the premises, and although the pleading is, as is too often the case in this country, vague and evasive, it seems to me that, looking at the facts of the case, it was raised by the defendant, and he was present and willing to pay on the premises when the rent was due. In fact, the rent for June has been accepted without prejudice. It appears to me, therefore, that the plaintiff has failed to prove that the rent was in arrears, so as to take this case out of the Rent and Charged Land (Restriction) Enactment. It is clear on all the evidence that she has been wanting these premises for her own occupation, and she should make application on those grounds to the Rent Board.

The appeal is allowed and the judgment of the District Court reversed.

Appeal Allowed.

OSMAN KHAN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Russell, J.) December 13, 1947]

Summary trial — Onus of proof — Evidence of accomplice — Use of Statements made in course of Police investigation to impeach evidence of a witness.

In this cases the learned District Judge convicted the accused and in his grounds of judgment said in effect (1) that there were two conflicting stories and that he had to decide which one to believe (2) that he had considered the evidence of the accused, the complainant and their witnesses (3) that he did not accept the story of the accused and his witnesses and (4) that he believed the evidence of the complainant and his witnesses who corroborated his story in material particulars.

Held, (1) that where an explanation is given by an accused which is consistent with innocence the Court must consider whether it might reasonably be true even though it is not convinced of its truth; (2) that where the complainant or other witness in a case is clearly an accomplice a judge or magistrate must state in his grounds of judgment that he has warned himself of this fact; and (3) that where a statement is used to impeach the evidence of a witness such statement must be properly proved.

CRIMINAL APPEAL.

R. Ramani for the Appellant.

C. H. Whitton for the Respondent.

Russell, J. : — I think that the only inference I can safely draw from the rather meagre grounds of the learned District Judge is that in this case he has misdirected himself as to the onus of proof in a criminal case. He has said in effect :—

1. That there are two conflicting stories and that he has to decide which one to believe;
2. That he has considered the evidence of the accused, the complainant and their witnesses;
3. That he does not accept the story of the accused and his witnesses;
4. That he believes the evidence of the complainant and his witnesses who corrobrate his story in material particulars.

He seems to have been of the opinion that the same degree of proof rest upon the accused to prove his story as rested upon the prosecution, whereas when an explanation is given by an accused which is consistent with innocence the Court must consider whether it might reasonably be true although not convinced of its truth. Furthermore, he gave no reason whatever for any of his beliefs or disbeliefs nor does he seem from from the grounds of his judgment to have warned himself that the complainant was an accomplice.

In addition, the O.C.P.D. gave inadmissible evidence as to the statements made by the accused in the course of the police investigation. It is true that the District Judge states in his grounds that in coming to a decision he paid no attention to that evidence but he also allowed the accused to be cross-examined about his statements to the O.C.P.D. to which he does not refer in the grounds of his judgment.

Lastly, the statement used to impeach the evidence of the third witness for the defence was not properly proved and this was undoubtedly an illegality. In view of the above reasons I quash the conviction and the accused is acquitted.

Appeal Allowed.

MUTHUSAMY v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Taylor, J.) December 17, 1947]

Summary trial — Principles as to use of statements to impeach credit of witness — Evidence of bad character — Criminal Procedure Code S. 124 — Evidence Ordinance S. 145.

In a summary trial the Magistrate should remember (a) that the trial is summary; (b) that the evidence must be confined to what is legally relevant; (c) that where the rule of evidence is explicit it must be enforced strictly on both sides; (d) that where the rule is discretionary, for example, as to points which are remote or only affect credit, the discretion must be exercised with regard to the real gravamen of the charge.

CRIMINAL APPEAL.

W. H. Salt for the Appellant.

J. N. C. Kilner (Crown Counsel) for the Respondent.

Taylor, J. : — In this case the accused, who is a lorry driver, was charged with house trespass with the intent to intimidate the occupant, and also with assault, under section 352, Penal Code.

The case for the Crown was that the accused went to the complainant's house and protested against the alleged participation of the complainant's son in writing a petition against certain persons, including tl. accused; after some argument the complainant asked the accused to leave his house but he did not go and threatened to hit the complainant. The accused also made as though to strike another person with a torch but the blow was averted.

Now it should have been clear from the charges and the opening statement of the prosecuting officer that no blood had been shed and that the offence, if any, was not serious. But all concerned, including I fear the learned Magistrate, partly lost their sense of proportion and instead of sticking to essentials and ending the case in an hour or two they allowed it to grow into a local cause celebre, the record of which extends to thirty pages.

I am well aware of the difficulties which attend cases of this kind, of the litigiousness of certain classes and of the desire for thoroughness among conscientious officers. I will therefore try to explain one or two points in the hope that it may be of some help to them. First, they must make themselves thoroughly familiar with those portions of the Procedure and Evidence Codes which are of frequent application in Magistrate's Courts. These are neither lengthy nor hard to pick out; they should be read again and again at intervals until they are so impressed on the mind of the officer that he applies them almost instinctively as the occasion arises. The main points are :—

(a) That the trial is summary;
(b) That the evidence must be confined to what is legally relevant;
(c) That where the rule of evidence is explicit it must be enforced strictly, on both sides.